

Application No. 10/585,589
Paper Dated: June 10, 2009
In Reply to USPTO Correspondence of December 10, 2008
Attorney Docket No. 3135-062040

REMARKS

This Amendment is responsive to the December 10, 2008 Office Action. In the Office Action, claims 22-28, 30-36 and 38-42 stand rejected. Claims 22, 29 and 37 have been amended. Support for the amendment to claim 22 may be found, for example, in Fig. 4 and page 12, lines 18-33 of the specification.

Allowable Subject Matter

In paragraph 8 of the Office Action, the Examiner states that claims 29 and 37 contain allowable subject matter. As set forth above, Applicant has rewritten claims 29 and 37 in independent form. Therefore, claims 29 and 37, as amended, are now in condition for allowance. Reconsideration of the objections to claims 29 and 37 is respectfully requested.

Rejection Under 35 U.S.C. §102

Claims 22-26, 28, 30-32, 36, 38-40 and 42 stand rejected under 35 U.S.C. § 102(b) for anticipation by United States Patent No. 4,171,060 to Howard et al. In view of the foregoing amendment and the following comments, reconsideration of this rejection is respectfully requested.

Amended independent claim 22 recites, *inter alia*:

...a sealing element adapted to engage on a wall of a food product container around a wall opening arranged in the wall, and an operating element adapted to co-act with the sealing element for displacing the sealing element between an opened position leaving the wall opening clear and a closed position sealing the wall opening, wherein...the relative orientation of the sealing element and the operating element can be changed such that the operating element pulls the sealing element in the closed position to engage under bias on the wall for substantially medium-tight sealing of the food product container.

The Howard patent discloses a drinking cup having an operating element (4, 8) rotatably connected to the lid (3). The lid (3) is provided with at least one orifice (9). The drinking cup further includes a valve (16) that is resiliently held against the orifice (9) for closing the orifice by means of a strip of plastic material (14) connected to the bottom side of the lid (3). By rotating the operating element (4, 8) with respect to the lid (3), the operating element (4, 8) cooperates with the valve (16) such that the valve will be displaced downwardly thereby opening the orifice (9). By further rotation of the operating element (4, 8), the mutual cooperation can be ended and the valve (16) will bias back against the orifice (9) thereby closing the orifice (9).

The Howard patent fails to disclose or suggest where the relative orientation of the sealing element and the operating element can be changed such that the operating element pulls the sealing element in the closed position to engage under bias on the wall for substantially medium-tight sealing of the food product container as recited in independent claim 22. Although the relative orientation of the valve (16) and operating element (4, 8) of Howard can be changed, the operating element (4, 8) of Howard does not pull the sealing element in the closed position to engage the wall under bias as in the claimed invention. By pulling the sealing element in the closed position, the sealing element can engage the wall considerably more tightly and more durably, *i.e.*, resulting in less material fatigue, than the arrangement of Howard, which relies upon the strip of plastic material to resiliently hold the valve (16) against the orifice (9).

Therefore, for at least the foregoing reasons, the Howard patent fails to disclose all of the limitations of independent claim 22. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 23-26, 28, 30-32, 36, 38-40 and 42 indirectly or directly depend from and add further limitations to independent claim 22. Thus, claims 23-26, 28, 30-32, 36, 38-40 and 42 are deemed to be in condition for allowance for all of the reasons set forth hereinabove.

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Rejections Under 35 U.S.C. §103

Claim 27 stands rejected under 35 U.S.C. § 103(a) for obviousness over the Howard patent in view of United States Patent Application Publication No. 2006/0226110 to Choi et al. Claims 33 and 35 stand rejected under 35 U.S.C. § 103(a) for obviousness over the Howard patent in view of United States Patent Application Publication No. 2005/0115977 to Dibdin et al. Claim 34 stands rejected under 35 U.S.C. § 103(a) for obviousness over the Howard patent and the Dibdin reference in view of United States Patent Application Publication No. 2005/0150895 to Eckstrum. Claim 41 stands rejected under 35 U.S.C. § 103(a) for obviousness over the Howard patent and the Eckstrum reference. In view of the following comments, reconsideration of these rejections is respectfully requested.

Applicant respectfully submits that the Choi reference and the Eckstrum reference fail to qualify as prior art. In particular, the earliest potential prior art dates under 35 U.S.C. § 102(e) for the Choi reference and the Eckstrum reference are April 8, 2005 and January 14, 2004, respectively, which are both after the January 13, 2004 priority date for the present application. Therefore, the Choi reference and the Eckstrum reference fail to qualify as prior art. Accordingly, reconsideration and withdrawal of the rejections of relying upon Choi and Eckstrum are respectfully requested.

Further, claims 27, 33-35 and 41 indirectly or directly depend from and add further limitations to independent claim 22. The Dibdin reference fails to disclose where the relative orientation of the sealing element and the operating element can be changed such that the operating element pulls the sealing element in the closed position to engage under bias on the wall for substantially medium-tight sealing of the food product container and, therefore, fails to overcome the deficiencies of the Howard patent discussed above. Thus, claims 27, 33-35 and 41 are deemed to be in condition for allowance for all of the reasons discussed above in connection with independent claim 22.

Reconsideration and withdrawal of these rejection are respectfully requested.

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Conclusion

In view of the foregoing amendments and comments, Applicant respectfully requests reconsideration of the rejections of claims 22-28, 30-36 and 38-42 and allowance of pending claims 22-42.

Respectfully submitted,
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